

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No. : 16-cv-7552

DANIEL RIVERA,

Plaintiff,
- against -

**VERIFIED ANSWER TO
THIRD-PARTY COMPLAINT**

HOME DEPOT U.S.A., INC.,

Defendant.

-----X

HOME DEPOT U.S.A., INC.,

Third-Party Plaintiff,
-against-

BRYAN'S HOME IMPROVEMENT CORP.,

Third-Party Defendant.

-----X

SIRS:

PLEASE TAKE NOTICE, that the third-party defendant BRYAN'S HOME IMPROVEMENT CORP. by its attorneys, CONNORS & CONNORS, P.C., answering the Third-Party Summons and Third-Party Complaint herein, states as follows:

ANSWERING THE FIRST CAUSE OF ACTION

1. Admits each and every allegation of the Third-Party Complaint set forth in paragraphs 1, 3, 4, 5, 6 and 7.
2. Denies each and every allegation of the Third-Party Complaint set forth in paragraphs 2 and 14.
3. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of the Third-Party Complaint set forth in paragraphs 8, 9, 10, 11, 12 and 13.

ANSWERING THE FIRST CAUSE OF ACTION

4. Third-Party Defendant repeats, reiterates and realleges each and every one of the foregoing admissions and denials made to the paragraphs of the Third-Party Complaint referred

to in paragraphs 1 through 14 with the same force and effect as though here again fully set forth at length.

5. Denies each and every allegation of the Third-Party Complaint set forth in paragraphs 16 and 17.

ANSWERING THE THIRD CAUSE OF ACTION

6. Third-Party Defendant repeats, reiterates and realleges each and every one of the foregoing admissions and denials made to the paragraphs of the Third-Party Complaint referred to in paragraphs 1 through 17 with the same force and effect as though here again fully set forth at length.

7. Denies each and every allegation of the Third-Party Complaint set forth in paragraphs 19 and 20.

ANSWERING THE FOURTH CAUSE OF ACTION

8. Third-Party Defendant repeats, reiterates and realleges each and every one of the foregoing admissions and denials made to the paragraphs of the Third-Party Complaint referred to in paragraphs 1 through 20 with the same force and effect as though here again fully set forth at length.

9. Denies each and every allegation of the Third-Party Complaint set forth in paragraphs 22 and 23.

ANSWERING THE FIFTH CAUSE OF ACTION

10. Third-Party Defendant repeats, reiterates and realleges each and every one of the foregoing admissions and denials made to the paragraphs of the Third-Party Complaint referred to in paragraphs 1 through 23 with the same force and effect as though here again fully set forth at length.

11. Denies each and every allegation of the Third-Party Complaint set forth in paragraphs 25, 26, 27 and 28.

PLEASE TAKE FURTHER NOTICE, that the following affirmative defenses are set forth as follows:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

That any injuries which may have been suffered by the plaintiff herein, were caused in whole or in part as the result of his own culpable conduct contributing thereto.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Upon information and belief, plaintiff's economic loss, if any, as specified in Section 4545 of the CPLR, was or will be replaced or indemnified, in whole or in part, from collateral sources, and this answering third-party defendant is entitled to have the court consider the same in determining such special damages as provided in Section 4545 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim for damages must be reduced based upon the plaintiff's failure to mitigate damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The plaintiff has not sustained a grave injury as defined by the New York State Workers' Compensation Law.

WHEREFORE, third-party defendant BRYAN'S HOME IMPROVEMENT CORP. demands judgment dismissing the Third-Party Complaint against it, together with the costs and disbursements of this action, and further demands that in the event this third-party defendant is found liable to plaintiff herein, then said third-party defendant, on the basis of the apportionment of responsibility, have judgment over and against the aforementioned co-defendant/third-party plaintiff for all or part of the verdict or judgment that plaintiff may recover against this answering third-party defendant, together with the costs and disbursements of this action and for any expenses incurred by it in the defense thereof, including attorney's fees.

Dated: Staten Island, New York
March 8, 2017

Respectfully,

CONNORS & CONNORS, P.C.

ROBERT J. PFUHLER (1964)
Attorneys for Third-Party Defendant
BRYAN'S HOME IMPROVEMENT CORP.
766 Castleton Avenue
Staten Island, NY 10310
(718) 442-1700
Our File No.: SIF 26263

TO: GINARTE, O'DWYER, GONZALEZ,
GALLARDO & WINOGRAD, LLP
Attorneys for Plaintiff
225 Broadway, 13th Floor
New York, NY 10007
(212) 601-9700

D'AMATO & LYNCH, LLP
Attorneys for Defendant/Third-Party Plaintiff
HOME DEPOT U.S.A., INC.
225 Liberty Street
New York, NY 10281
(212) 269-0927

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing VERIFIED ANSWER TO THIRD-PARTY COMPLAINT was mailed by first class mail, postage prepaid this 8th day of March, 2017, to all counsel of record as indicated below.



ROBERT J. PFUHLER (1964)

TO: GINARTE, O'DWYER, GONZALEZ,
GALLARDO & WINOGRAD, LLP
Attorneys for Plaintiff
225 Broadway, 13th Floor
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RJI No.

Hon.

DANIEL RIVERA,

-against-

Plaintiff,

HOME DEPOT U.S.A., INC.,

and a Third-Party Action

Defendants.

VERIFIED ANSWER TO THIRD-PARTY COMPLAINT

CONNORS & CONNORS, P.C.
Attorneys for Third-Party Defendant BRYAN'S HOME IMPROVEMENT CORP.
Office and Post Office Address, Telephone
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX

Signature (Rule 130-1.1-a)



ROBERT J. PFUHLER (1984)

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY
that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on
 NOTICE OF SETTLEMENT
that an order
settlement to the HON.
of the within named court, at
on
Dated,

of which the within is a true copy will be presented for
one of the judges

at M

Yours, etc.
CONNORS & CONNORS, P.C.
Attorneys for
Office and Post Office Address
766 CASTLETON AVENUE
STATEN ISLAND, NY 10310

To